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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 Jane Doe 1, Individually and
4 on behalf of all others
5 similarly situated,

Plaintiffs,

v.

18 Civ. 10018 (JSR)

6 Deutsche Bank
7 Aktiengesellschaft, Deutsche
8 Bank AG New York Branch,
9 Deutsche Bank Trust Company
Americas,

Defendants.

-----x

10 Jane Doe 1, Individually and
11 on behalf of all others
12 similarly situated,

Plaintiffs,

v.

18 Civ. 10019 (JSR)

14 JP Morgan Chase & Co.,

Defendants.

-----x

18 New York, N.Y.
19 December 5, 2022
9:30 a.m.

20 Before:

21 HON. JED S. RAKOFF,

22 District Judge

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APPEARANCES

BOISE SCHILLER & FLEXNER LLP
Attorneys for Plaintiffs

BY: DAVID BOIES
SIGRID S. McCAWLEY

EDWARDS POTTINGER LLC
Attorneys for Plaintiffs

BY: BRADLEY J. EDWARDS
BRITTANY HENDERSON

ROPES & GRAY LLP
Attorneys for Defendant Deutsche Bank Aktiengesellschaft
BY: JAMES P. DOWDEN
LISA H. BEBCHICK

WILMER CUTLER PICKERING HALE AND DORR LLP
Attorneys for Defendant JP Morgan Chase & Co.
BY: FELICIA ELLSWORTH
HILLARY CHUTTER-AMES
ROBERT L. BOONE
BOYD JOHNSON

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1 (Case called)

2 (Appearances noted)

3 THE COURT: So, a couple of housekeeping matters. I
4 received just now, apparently it was handed to my law clerk,
5 two proposed orders, permission *pro hac vice*, one from Felicia
6 Ellsworth, the other from Hillary Chutter-Ames. Are any of
7 them here?

8 MS. ELLSWORTH: Yes, your Honor. Felicia Ellsworth
9 and Ms. Chutter-Ames.

10 THE COURT: So, under the rules of the Southern
11 District of New York, you were supposed to provide a
12 certificate of good standing from your state court admission.
13 I don't see them.

14 MS. ELLSWORTH: No, your Honor. The reason for the
15 oral motion is we were just brought into this case on Wednesday
16 of last week and I could not obtain a certificate of good
17 standing from Massachusetts before today's conference. So, in
18 order to appear today, wanted to make an oral motion. Happy to
19 follow up. We have the certificate on order.

20 THE COURT: You're admitted in Massachusetts?

21 MS. ELLSWORTH: That's correct, your Honor.

22 THE COURT: When you were admitted?

23 MS. ELLSWORTH: June 2006, your Honor.

24 THE COURT: 2006. You don't look more than 13.

25 MS. ELLSWORTH: Thank you, your Honor.

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1 THE COURT: Let me turn to Ms. Chutter-Ames.

2 When were you admitted and to what bar?

3 MS. CHUTTER-AMES: In 2019 to the bar of the State of
4 Illinois.

5 THE COURT: And do both of you represent that you are
6 still in good standing and have not been the subject of any
7 disciplinary activity?

8 MS. ELLSWORTH: Yes, your Honor.

9 MS. CHUTTER-AMES: Yes, your Honor.

10 THE COURT: So I should note for the record that
11 Ms. Chutter-Ames is my former law clerk. I never recuse myself
12 when a former law clerk appears before me, but I always give
13 them a very hard time. So if you are prepared for that, we
14 will proceed and I will approve both of these motions and give
15 them to my courtroom deputy.

16 MS. ELLSWORTH: Thank you, your Honor.

17 THE COURT: Now, is either defendant planning on
18 bringing a motion to dismiss?

19 MS. ELLSWORTH: Yes, your Honor. JP Morgan Chase is
20 intending to file a motion to dismiss. We have an agreed
21 schedule for that motion that's been submitted --

22 THE COURT: When is your time to answer?

23 MS. ELLSWORTH: We have not yet been served, so we
24 don't have a time to answer.

25 THE COURT: You haven't been served?

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1 MS. ELLSWORTH: We haven't, your Honor.

2 MR. DOWDEN: Neither have the Deutsche Bank
3 defendants, your Honor.

4 THE COURT: Can plaintiff counsel please explain -- I
5 know it must be extremely difficult to serve JP Morgan Chase,
6 they only have about 95 branches in the City of New York.

7 MR. BOIES: Your Honor, I apologize. We have had an
8 issue on service with respect to some of the foreign entities
9 that are named, which I had anticipated they would accept
10 service on. I was not aware that we had not completed service
11 on JP Morgan and Deutsche Bank, which, as the Court says, would
12 be incredibly easy to do.

13 THE COURT: Let me ask counsel for the defendants, are
14 you prepared to accept service?

15 MR. DOWDEN: Your Honor, we're prepared to accept on
16 behalf of our --

17 MS. ELLSWORTH: Yes, your Honor, we're prepared to
18 accept service.

19 THE COURT: Let's make sure that service is
20 accomplished by noon today.

21 MR. BOIES: Thank you, your Honor.

22 THE COURT: Now, you had a proposed schedule for
23 JP Morgan's motion to dismiss?

24 MS. ELLSWORTH: Yes, your Honor. We proposed that it
25 would be filed by January 17th, with --

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1 THE COURT: January 17th? What is your ground for
2 moving to dismiss?

3 MS. ELLSWORTH: So it's a 12(b)(6) motion, your Honor.
4 There are claims under the TDPA as well as under the Adult
5 Youth Survivors Act. It's the failure to state a claim under
6 both counts, which will -- there is also classic claims in this
7 case, although class certification at least on the schedule the
8 parties have agreed to would have to have been later. But,
9 your Honor, we submit that we can put together a motion that
10 would be on all claims in the case filed by January 17th.

11 THE COURT: All that makes sense, but since you
12 already know what grounds you're going to move on, why do you
13 want to wait until January 17th?

14 MS. ELLSWORTH: It's a combination of factors, your
15 Honor. We're happy to move on whatever schedule the Court
16 sets, but we had set January 17th to allow sufficient time,
17 both with the intervening holidays as well as for a client
18 review and all of that.

19 It is a pretty substantial motion, I would say it's a
20 lengthy complaint with various allegations, so we want to make
21 sure we bring the best arguments forward to the Court, but
22 again, we're happy to proceed on whatever schedule the Court
23 sets.

24 THE COURT: I think on a more expedited schedule,
25 we're going to have discovery begin promptly. So I presume you

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1 would like to have that motion resolved sooner rather than
2 later.

3 MS. ELLSWORTH: That's correct, your Honor.

4 THE COURT: Can you file that motion next week?

5 MS. ELLSWORTH: Your Honor, if we can have until the
6 end of December, that would certainly allow sufficient time to
7 make sure that we fully ventilate all the issues we would want
8 to raise. As I said it's a lengthy --

9 THE COURT: Of course, the end of December means that
10 your young associates will have to spend the holiday week doing
11 the work that needs to be done and checking citations and
12 things like that while you're off with your partners in your
13 undoubtedly wonderful holiday vacation. Why not before?

14 MS. ELLSWORTH: Your Honor, again, we're happy to
15 proceed on whatever schedule you submit. I would suggest
16 December 30th would allow us sufficient time to put together
17 the motion to dismiss, but I'm happy to proceed on whatever
18 schedule the Court sets.

19 THE COURT: It sounds excessive to me, but all right.
20 The motion to dismiss in JP Morgan Chase, moving papers
21 December 30th.

22 How long does plaintiffs' counsel want for answering
23 papers? I'll give you the choice of two weeks or two weeks.

24 MR. BOIES: We'll take two weeks, your Honor.

25 THE COURT: So answering papers, that will be

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1 January 13th.

2 Reply papers, you want January 20th, don't you?

3 MS. ELLSWORTH: If it's available, your Honor.

4 THE COURT: Now, I don't know that I'll need oral
5 argument, but let's set it. So for January 25th.

6 THE DEPUTY CLERK: January 25th, a Wednesday, two
7 trials, and you leave for Columbia at 3:45.

8 THE COURT: Okay. You got me. How about Friday?

9 THE DEPUTY CLERK: Friday the 27th, you are in
10 San Diego speaking.

11 THE COURT: How about Thursday?

12 THE DEPUTY CLERK: Thursday the 26th, that's when you
13 leave for San Diego.

14 THE COURT: Well, let's put it down for the morning of
15 the 26th at 9:00 a.m.

16 THE DEPUTY CLERK: If you don't leave till the
17 afternoon, you have a 9:30 trial, two of them, actually.

18 THE COURT: Yes, so this is 9:00 a.m. Is that a
19 problem?

20 MS. ELLSWORTH: Your Honor, I have a summary judgment
21 argument in the District of Massachusetts on Wednesday the 25th
22 in the afternoon. If it would be possible to push this
23 argument to the following Monday, that would be most
24 appreciated.

25 THE COURT: I'm going to be sitting on the Ninth

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1 Circuit. My inclination is we won't need oral argument on this
2 motion, they seem to be familiar issues. So why don't we don't
3 put it down for oral argument now. If I change my mind and
4 think oral argument is necessary, we'll work out the date.

5 MS. ELLSWORTH: That's fine, your Honor. Thank you.

6 THE COURT: Now, is Deutsche Bank also planning to
7 bring a motion to dismiss?

8 MR. DOWDEN: Yes, your Honor, we are planning to bring
9 a motion to dismiss.

10 THE COURT: Would you like the same schedule?

11 MR. DOWDEN: Your Honor, we're expecting a little bit
12 of a longer case scheduled because of one additional claims
13 that we had brought against us. We have a civil Rico claim in
14 addition to the other cases.

15 THE COURT: A civil Rico claim, I never heard of that
16 before.

17 MR. DOWDEN: Exactly, your Honor. So we still haven't
18 received a Rico case statement, which we think would be very
19 helpful for us to file the motion.

20 THE COURT: I don't know that that is still required.
21 It's not required under my rules.

22 MR. DOWDEN: I believe under the local rules, 20
23 days --

24 THE COURT: I know what you're saying. The good thing
25 about civil Rico is, to paraphrase Oscar Wilde, it's the last

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1 refuge of the scoundrel. Nevertheless, can you get defense
2 counsel a Rico case statement by the end of this week?

3 MR. BOIES: Yes, your Honor, I think we can.

4 THE COURT: So given that, same schedule, yes?

5 MR. DOWDEN: Yes, your Honor, we'll agree to the same
6 schedule.

7 MR. BOIES: Your Honor, can we have until Monday to do
8 a -- I'm reminded our firm meeting is at the end of this week.

9 THE COURT: All right. Now, with respect to the case
10 management plan -- by the way, these two cases are consolidated
11 for all pretrial purposes. I'm more skeptical about trial, but
12 pretrial purposes, they're all consolidated.

13 And I thank all of you for your parallel case
14 management plans.

15 Now, the only question I had is you had first requests
16 for documents to be served by December 16th, that makes perfect
17 sense. Then you had interrogatories, very, very limited
18 interrogatories permitted by local Rule 33.3(a) not to be
19 served by anyone until February 9th. Why the delay?

20 MR. BOIES: Our view, I think, is we're going to serve
21 them earlier. That's the last date they had to be served by.

22 THE COURT: I'm sorry?

23 MR. BOIES: We planned to serve them earlier, your
24 Honor. That was just the last date they had to be served by
25 that date. In other words, we weren't going to wait until that

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1 date necessarily to serve them.

2 THE COURT: I assume you keep the local rules under
3 your pillow, so you know that local Rule 33.3(a) is very
4 limited, and particularly since initial disclosures duplicate a
5 lot of it, it's even more limited. So I would have thought
6 maybe December 30.

7 MR. BOIES: That would be fine, your Honor.

8 THE COURT: That work for defense counsel?

9 MR. DOWDEN: Yes, your Honor.

10 MS. ELLSWORTH: That's fine, your Honor. Thank you.

11 THE COURT: Everything else looks fine. Thank you for
12 including the proposed schedule, which looks fine on class
13 certification. I'll hold oral argument on class certification.
14 Let's look at May 12th.

15 THE DEPUTY CLERK: May 12th, a Friday, we have two
16 trials, nothing after.

17 THE COURT: So 4:00 p.m. on May 12th. Let me ask with
18 respect to plaintiff's counsel, how long a trial is your
19 individual cases going to take?

20 MR. BOIES: Having in mind what I know is the Court's
21 approach to trials, I think is in the range of eight or nine
22 trial days.

23 THE COURT: And co-plaintiff or plaintiff in the other
24 case?

25 MR. EDWARDS: Yes, your Honor. I would agree. I

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1 would think two weeks for trial.

2 THE COURT: Any disagreement with that from defense
3 counsel?

4 MS. ELLSWORTH: Your Honor, that seems about right.
5 We don't know a lot of the case yet, but that seems reasonable.

6 MR. DOWDEN: We're in the same position, your Honor.
7 We don't know yet, but it seems reasonable.

8 THE COURT: So what I think we ought to do, because
9 you're all very busy and accomplished lawyers, is set two trial
10 dates now, one for one case, one or the other case. If it
11 turns out that everyone wants a single combined trial, we can
12 deal with that on whatever turns out to be the earlier of the
13 two dates, but for now, it looks to me it will probably be
14 separate cases for trial.

15 So, what days in August and September are counsel not
16 available for trial?

17 MS. ELLSWORTH: Your Honor, we have availability
18 throughout August and September, no restrictions.

19 MR. BOIES: We have no restrictions either, your
20 Honor.

21 MR. DOWDEN: Your Honor, we're amenable to the Court's
22 schedule.

23 THE COURT: So, my thought was that we would try
24 the -- if it's two separate trials, try the Deutsche Bank case,
25 beginning August 7th, and the JP Morgan case beginning

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1 September 5th. That allows, if it does go a little bit more
2 than two weeks, we still have time. The reason I'm putting
3 JP Morgan second is because I'm so intimidated by the Rico
4 claim. So, in any event, any problems with either of those
5 situations?

6 MS. ELLSWORTH: No, your Honor.

7 MR. BOIES: No problem with us, your Honor.

8 MR. DOWDEN: No, your Honor.

9 MR. EDWARDS: It's fine, your Honor.

10 THE COURT: Very good. I think that's all on my list.
11 Anything else anyone wants to take up now?

12 MR. BOIES: Not from the plaintiffs, your Honor.

13 MR. EDWARDS: No, your Honor.

14 THE COURT: Anything from defense?

15 MS. ELLSWORTH: No, your Honor.

16 MR. DOWDEN: Nothing, your Honor.

17 THE COURT: Very good. Much appreciated. Looking
18 forward.

19 * * *